

May 4, 2020

VIA ECF

The Honorable Analisa Torres
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: Joint Letter in *Worth Rises et al. v. U.S. Department of Homeland Security et al.*, 1:20-cv-1876-AT

Dear Judge Torres:

Plaintiffs and Defendants submit this letter in accordance with the Court's March 4, 2020 order, which also ordered an initial conference to be held on May 11, 2020 at 11:20 am.

Brief Description of the Case

Plaintiffs initiated this action under the Freedom of Information Act ("FOIA"), by Complaint dated March 3, 2020, seeking to compel a response by U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, and U.S. Department of Justice (collectively, "Defendants") to their July 23, 2019 FOIA requests which sought, broadly speaking, records of communications between officials at the Department of Justice (DOJ), Department of Homeland Security (DHS), and DHS component Immigration and Customs Enforcement (ICE) and companies that contract to provide detention and incarceration services or lobbying firms that may represent those companies. *See* Compl. ¶¶ 10, 13, 18, 21, ECF No. 1.

Plaintiff Worth Rises represents that it is a non-profit dedicated to dismantling the prison industrial complex. Compl. ¶ 5. Plaintiff American Oversight represents that it is a non-profit, nonpartisan organization committed to ensuring transparency and promoting accountability for government officials by obtaining public records and widely disseminating the information contained in those records. Compl. ¶ 6. Plaintiffs represent that they submitted the FOIA requests that form the basis of this action to shed light on the influence of the relevant private actors on Defendants' federal government policies and actions.

Anticipated Motions and Prospect for Settlement

The parties believe that before any motions will be filed or settlement will be reached, the parties must agree on a schedule for Defendants to search for and process the FOIA requests, and a

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schedule to produce the requested, non-exempt records in Plaintiffs' FOIA requests.¹ After the requested records have been processed and produced, the parties may need to confer regarding the adequacy of Defendants' searches for responsive records and regarding any redactions or withholdings of records under Defendants' assertions of Exemptions from disclosure under the FOIA statute. The parties may reach a settlement at this juncture.

If there are still issues in dispute after Defendants' productions have completed and the parties have conferred, it may be necessary to resolve those issues through summary judgment briefing and Defendants' submission of declarations. *Wood v. FBI*, 432 F.3d 78, 85 (2d Cir. 2005).

Case Management Plan and this FOIA Action

The parties agree that this matter brings claims under the Freedom of Information Act (FOIA), these matters are resolved either through settlement or summary judgment briefing, a trial is exceedingly unlikely. See *Wood*, 432 F.3d at 85; *Carney v. DOJ*, 19 F.3d 807, 812 (2d Cir. 1994).

Plaintiff additionally notes it believes the case law establishes that discovery is rarely necessary in FOIA cases, unless the plaintiff has made a credible allegation of bad faith on the part of the defendant agency. See *Wood*, 432 F.3d at 85; *Carney*, 19 F.3d at 812. As Plaintiffs have not made an allegation of bad faith, Plaintiff believes that discovery is unlikely to be necessary in this action.

Because neither discovery nor a trial is likely in this action, the parties agree that the initial disclosures and discovery plan required by Federal Rule of Civil Procedure 26 are not necessary here. Moreover, because this Court's Case Management Plan primarily concerns discovery and trial matters, the parties are unable to submit meaningful information on that form and propose to update the Court through joint reports.

The parties do not consent to all further proceedings being conducted before a magistrate judge, and Plaintiffs do not currently anticipate filing any amended pleadings.

¹ The parties will endeavor to reach such an agreement through conferral and will alert the Court if they cannot reach agreement.

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Respectfully submitted,

/s/ Daniel A. McGrath

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